

APPEAL NO. 040111
FILED MARCH 3, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 23, 2003, (hearing officer), who presided over the underlying hearing, signed a Texas Workers' Compensation Commission Order for Attorney's Fees (Order), approving 8.40 hours of the 9.10 hours requested in attorney's fees for the appellant (attorney) and 0.0 hours of the 1.1 hours requested for legal assistant time. The attorney appeals and requests that he be awarded 0.7 additional hours of attorney time and 1.1 hour of legal assistant time for a total additional fee of \$142.50. The file does not contain a response from respondent 1 (carrier) or respondent 2 (claimant).

DECISION

Reversed and rendered.

We review attorney's fees cases under an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The Attorney Fee Processing System (AFPS) printout shows that the attorney submitted a justification text for the fees requested in excess of the guidelines. The reason the attorney gave for exceeding the guidelines was the complexity of the case. The AFPS indicates that the hearing officer did not enter a log text explaining her decision to deny the fees in excess of the guidelines. The only reason given for disallowing the 0.7 hours of attorney time and the 1.1 hour of legal assistant time is "Ex Guideline/Unreasonabl." A fee may exceed the guidelines provided the attorney requesting the fee provides a justification for doing so. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(b) (Rule 152.4(b)); Texas Workers' Compensation Commission Appeal No. 970248, decided March 31, 1997. We have recognized that where a hearing officer does not consider the justification text presented and merely indicates "exceeds guidelines," he or she does not have a sound basis to disapprove the requested fees. Texas Workers' Compensation Commission Appeal No. 960158, decided March 5, 1996. In this instance, it does not appear that the hearing officer considered the justification text and she gave no reasoned explanation for disallowing the disputed items. As such, her denial of the requested fees was an abuse of discretion.

In view of the justification text and the nature of the items in dispute, we reverse the Order and render a decision that the disputed items are approved for an additional 0.7 hours of attorney time at \$125.00 per hour (\$87.50) and an additional 1.1 hour of legal assistant time at \$50.00 per hour (\$55.00), for a total approved fee of \$1,255.50 (which includes the number of hours approved by the hearing officer as well as \$63.00 in expenses approved by the hearing officer).

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge